IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6845 OF 2005.

The State of Maharashtra. ... Applicant.

Versus.

Madhukar Keshav Aaglave & others. ... Respondents.

Shri A.S.Shitole, A.P.P. for the Applicant.

Shri N.V.Bandiwadekar for the Respondents Nos.1 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 10th November, 2006.

P.C.:

1. Heard the learned A.P.P. for the Applicant and Shri Bandiwadekar appearing for the Respondents. The acquittal of the Respondents is for offences punishable under sections 324, 323, 504 read with section 34 of the Indian Penal Code.

2. The Respondents Nos.1 and 2 are real brothers and Respondents nos.4 and 3 are their respective wives. One Jaysing Aglave lodged complaint against them who is claiming to be the neighbour of the Respondents. There is a wall in between the house of the Complainant and the Respondents and there is a civil litigation pending between the complainant and the Respondent in respect of the said wall.

3. On 2nd June 2003, in the night when it was raining, the Respondent No.2 placed a tin sheet on the wall of the house of the Complainant and as a result tiles above the roof of the house of the Complainant

were broken. As a result thereof, rain water started coming inside the house of the complainant. When the complainant questioned the 2nd Respondent, he gave a blow by brick on the chin of the complainant. According to the complainant, the 1st Respondent also assaulted him and the 3rd Respondent gave kick and fist blows to him. According to the complainant, the 3rd and 4th Respondents abused him and threatened with dire consequences.

4. So far as the offence under section 504 is concerned, the learned Judge after considering the evidence of the complainant came to the conclusion that the specific words allegedly uttered by the accused persons were not stated by the complainant. The learned Judge held that merely stating that the accused persons abused him was not sufficient to prove the offence.

5. While considering the other evidence in support of the offence under section 324 and 323 of the Indian Penal Code, the learned trial Judge held that it was unsafe to rely upon the testimony of the Complainant and his wife considering the dispute between the complainant and the Respondents over the wall in between the two houses. P.W.3 who is the sister of the complainant was examined as an eye witness. However, in her deposition she has stated that she has not seen the incident. On the point of injuries caused to the wife and nephew of

the complainant, the learned trial Judge found that there were material contradictions in the evidence of P.W.1 and P.W.2. The contradiction was as regards which accused assaulted the said persons. The learned trial Judge noted that the complainant's nephew was not examined.

6. The conclusion reached by the learned trial Judge is a possible conclusion on the basis of the evidence on record. No case is made out for grant of leave. The Application is rejected.

Judge.